

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NAVEED B. SHAH,

Case No. 1:13-CV-5434 (JG)(JO)

Plaintiff,

-against-

**ANSWER and AFFIRMATIVE
DEFENSES**

BELLROSE AUTO & GAS, INC.
d/b/a BELLEROSE AUTO-N-GAS,
SOFIA JALIL and AJAL JALIL,

Defendants.
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Defendants, Bellrose Auto & Gas, Inc. and Sofia Jalil, individually and as executrix of the estate of Ajal Jalil, by their attorneys, Kaiser Saurborn & Mair, P.C., respond to the allegations of the plaintiff's complaint as follows:

1. Paragraph "1" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

2. Paragraph "2" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

3. Paragraph "3" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

4. Paragraph "4" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

5. Defendants deny the allegations of paragraph “5” of the complaint, except admit that Shah was employed by them.

6. Paragraph “6” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response.

7. Defendants deny the allegations of paragraph “7” of the complaint, except admit that Bellrose Auto & Gas, Inc. (“Bellrose”) is a domestic corporation duly organized and validly existing under the laws of New York.

8. Defendants admit the allegations of paragraph “8” of the complaint.

9. Defendants deny the allegations in paragraph “9” of the complaint, including those containing legal contentions or conclusions and not allegations of fact requiring a response, except admit that Ms. Jalil is an officer of Bellrose and since March 8, 2010 assumed operational control of Bellrose and made all material decisions concerning its employees, including those relating to compensation.

10. Defendants deny the allegations in paragraph “10” of the complaint, including those containing legal contentions or conclusions and not allegations of fact requiring a response.

11. Defendants deny the allegations of paragraph “11” of the complaint.

12. Defendants deny the allegations in paragraph “12” of the complaint.

13. Defendants deny the allegations in paragraph “13” of the complaint.

14. Defendants admit the allegations in paragraph “14” of the complaint.

15. Defendants deny the allegations in paragraph “15” of the complaint.

16. Defendants deny the allegations in paragraph “16” of the complaint.

17. Defendants deny the allegations in paragraph “17” of the complaint, except admit that the plaintiff was paid the same rate for all hours worked.

18. Defendants deny the allegations in paragraph “18” of the complaint.

19. Defendants admit the allegations in paragraph “19” of the complaint.

20. Defendants deny the allegations in paragraph “20” of the complaint.

21. Defendants admit the allegations of paragraph “21” of the complaint.

22. Defendants admit the allegations of paragraph “22” of the complaint.

23. Defendants deny the allegations of paragraph “23” of the complaint.

24. Defendants deny the allegations of paragraph “24” of the complaint.

25. Defendants deny the allegations of paragraph “25” of the complaint, except admit that some employees were paid the same rate for all hours worked.

26. Defendants deny the allegations of paragraph “26” of the complaint, except admit that at times some employees worked in excess of 40 hours per week.

27. Defendants deny the allegations of paragraph “27” of the complaint.

28. Defendants deny the allegations of paragraph “28” of the complaint.

29. Defendants admit the allegations of paragraph “29” of the complaint.

30. Defendants admit the allegations of paragraph “30” of the complaint.

31. Paragraph “31” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

32. Defendants deny the allegations of paragraph “32” of the complaint.

33. Defendants deny the allegations of paragraph “33” of the complaint, except admit

that defendants Bellrose and Sofia Jalil managed the terms and conditions of the plaintiff's employment, including his compensation during the period he was an employee of Bellrose.

34. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph "34" of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 19 and 25 as if set forth at length herein.

35. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph "35" of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 20 and 28 as if set forth at length herein.

36. Defendants neither admit nor deny the allegations of paragraph "36" of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

37. Paragraph "37" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

38. Paragraph "38" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

39. Paragraph "39" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response.

40. Paragraph "40" of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

41. Defendants deny the allegations of paragraph “41” of the complaint.

42. Paragraph “42” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

43. Defendants deny the allegations of paragraph “43” of the complaint.

AS TO COUNT I

44. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “44” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 43 as if set forth at length herein.

45. Defendants neither admit nor deny the allegations of paragraph “45” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

46. Defendants neither admit nor deny the allegations of paragraph “45” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

47. Defendants deny the allegations of paragraph “47” of the complaint.

48. Defendants neither admit nor deny the allegations of paragraph “48” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

49. Defendants neither admit nor deny the allegations of paragraph “49” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

50. Paragraph “50” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

51. Defendants neither admit nor deny the allegations of paragraph “51” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

52. Paragraph “52” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

53. Paragraph “53” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

54. Paragraph “54” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

AS TO COUNT II

55. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “55” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 54 as if set forth at length herein.

56. Defendants neither admit nor deny the allegations of paragraph “56” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

57. Paragraph “57” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

58. Defendants deny the allegations of paragraph “58” of the complaint.

59. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “59” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraph 47 as if set forth at length herein.

60. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “60” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraph 48 as if set forth at length herein.

61. Defendants neither admit nor deny the allegations of paragraph “61” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

62. Paragraph “62” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

63. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “63” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraph 52 as if set forth at length herein.

64. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “64” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraph 53 as if set forth at length herein.

65. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “65” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraph 54 as if set forth at length herein.

66. Defendants neither admit nor deny the allegations of paragraph “66” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

67. Defendants neither admit nor deny the allegations of paragraph “67” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

68. Defendants neither admit nor deny the allegations of paragraph “68” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

69. Defendants deny the allegations of paragraph “69” of the complaint.

70. Defendants neither admit nor deny the allegations of paragraph “70” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

71. Paragraph “71” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

72. Paragraph “72” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

73. Paragraph “73” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

74. Paragraph “74” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

75. Paragraph “75” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

76. Paragraph “76” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

77. Paragraph “77” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

AS TO COUNT III

78. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “78” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 77 as if set forth at length herein.

79. Paragraph “79” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

80. Defendants neither admit nor deny the allegations of paragraph “80” of the complaint as containing legal contentions or conclusions and not allegations of fact requiring a response.

81. Paragraph “81” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

82. Paragraph “82” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

83. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “83” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 52 and 63 as if set forth at length herein.

84. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “84” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 53 and 64 as if set forth at length herein.

85. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “85” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 54 and 65 as if set forth at length herein.

AS TO COUNT IV

86. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “86” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraph 79 as if set forth at length herein.

87. Paragraph “87” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

88. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “88” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraph 81 as if set forth at length herein.

89. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “89” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 52, 63 and 83 as if set forth at length herein.

90. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “90” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 53, 64 and 84 as if set forth at length herein.

91. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “91” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 54, 65 and 85 as if set forth at length herein.

AS TO COUNT V

92. Defendants admit the allegations of paragraph “92” of the complaint.

93. Paragraph “93” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

94. Defendants deny the allegations of paragraph “94” of the complaint.

95. Paragraph “95” of the complaint contains legal contentions or conclusions and not

allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

96. Paragraph “96” of the complaint contains legal contentions or conclusions and not allegations of fact requiring a response, but to the extent it makes factual allegations concerning the underlying causes of action, they are denied.

97. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “97” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 52, 63, 83 and 89 as if set forth at length herein.

98. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “98” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 53, 64, 84 and 90 as if set forth at length herein.

99. Pursuant to Fed.R.Civ.P. 10(c), as their response to paragraph “99” of the complaint, defendants repeat and reallege their responses to the allegations contained in paragraphs 54, 65, 85 and 91 as if set forth at length herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by reason of failure to mitigate damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred, in whole or in part, by the applicable statutes of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Any damage or loss alleged to have been suffered by plaintiff is not causally related to any act or omission alleged to be chargeable to these answering defendants.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Any damage or loss alleged to have been suffered by plaintiff is the sole result of his own culpable conduct.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

To the extent defendants have not paid plaintiff properly for all hours worked, that failure was not intentional but inadvertent, and the amounts involved are de minimis.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Defendants hereby reserve the right to amend their Answer to assert additional affirmative defenses as revealed or suggested by the completion of their on-going investigation and discovery.

WHEREFORE, defendants Bellrose Auto & Gas, Inc. and Sofia Jalil, individually and as executrix of the estate of Ajal Jalil, demand judgment against the plaintiff dismissing the complaint and awarding costs and disbursements, including reasonable attorney's fees, and such other and further relief as may be just and proper.

Dated: New York, New York
December 2, 2013

KAISER SAURBORN & MAIR, P.C.
Attorneys for Defendants

By: /s/
Henry L. Saurborn, Esq.

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